

# Filing for Individual Bankruptcy, what's it all about?

## *Publication of the Association of the Bar of the City of New York*

(Rev. EDNY 4/22/04)

### **Introduction**













The purpose of this booklet is to explain bankruptcy for individuals who are in debt and want to explore available options. This booklet will not try to explain everything there is to know about bankruptcy, but should be used as a guide for those who see no other alternative to bankruptcy. Depending upon how complicated your financial situation is, you may want to consult a lawyer before proceeding.

The information contained in this booklet applies to residents of the New York City metropolitan area. A resident of New Jersey or any other state should consult a source familiar with the laws of that state, since certain elements of bankruptcy law vary from state to state.

Bankruptcy is a legal method for discharging certain debts and obtaining a "fresh start." Before filing for bankruptcy, an individual should assess what the advantages and disadvantages may be.

Some of the largest companies in the nation have used the bankruptcy laws to resolve or restructure their debt problems. This same procedure is available to any individual who feels that it may be the solution to his or her personal financial difficulties. There is no minimum amount of debt necessary in order to file for bankruptcy. The only requirement is that the individual have debts.

There are two principal types of bankruptcy available to individuals other than farmers: Chapter 7 (liquidation) and Chapter 13 (adjustment of debt of an individual with regular income). Major differences exist between the two.

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### **Chapter 7 vs. Chapter 13**

The two main types of bankruptcies available to individuals deal with different debt situations in different ways. The typical Chapter 7 debtor has few assets and considerable debts primarily associated with credit cards, store purchases, hospital bills and other dischargeable debts. Creditors are paid, if at all, from anything that the debtor currently owns that cannot be claimed as exempt. Certain debts are not "dischargeable" in a Chapter 7 proceeding but are dischargeable in a Chapter 13. Dischargeable means that by filing for bankruptcy you will not have to pay the debt if the court grants the discharge.

The typical Chapter 13 debtor files because the debtor is in arrears with rent, mortgage payments, car loan or other secured debt, because the debtor has substantial debts which cannot be discharged in a Chapter 7 bankruptcy, or because the debtor has some assets which he or she wants to keep but cannot be claimed as exempt. Another reason to file a Chapter 13 is to protect someone else who may be liable for your debts, such as a co-signer or spouse. In Chapter 13, creditors are paid out of the debtor's future earnings and a "plan" must be proposed to pay these creditors. In order to qualify for a Chapter 13 bankruptcy the debtor must be an individual with regular income. This regular income may consist of wages, commissions, rents, public benefits, social security, unemployment compensation, alimony, child support, pensions or other types of income which can be estimated.

In a Chapter 13 bankruptcy, taxes are paid first. Next, the current landlord, mortgage holders and other secured creditors must be paid in full (100%) over the 36-60 month period of the Chapter 13 plan if the debtor wants to keep the apartment, house or other asset which secures the debt. Finally, other unsecured creditors will receive whatever remains after priority and secured creditors are paid. Unsecured creditors do not necessarily have to be paid in full.

If the non-contingent unsecured debts are greater than \$307,675 or the secured debts are greater than \$922,975, or if the debtor is a stockbroker or commodities dealer, the debtor is not eligible to file a Chapter 13 proceeding.

Generally, if all of your debts are dischargeable, a Chapter 7 would be advisable. However, if your financial situation is clouded by rent or mortgage arrears, tax debts, student loans or substantial non-exempt assets, a Chapter 13 may be advisable.

## **Drafting and Filing the Bankruptcy Petition**

A bankruptcy petition contains approximately twenty pages of information. The purpose of such extensive data is to provide the Bankruptcy Court with a complete picture of the debtor's current assets, liabilities, income, expenses and recent financial transactions. It is important that the debtor complete the necessary schedules as accurately as possible to avoid delay in filing and to obtain the full benefits provided to the debtor. Also, making false statements or representations in a bankruptcy petition is punishable by a fine or imprisonment.

The forms can be obtained from most legal stationers. The most commonly used form is a bankruptcy package published by Julius Blumberg which costs approximately \$20. It is a series of individual carbonized pages and a worksheet. The debtor should first draft the information on the worksheet, review it for accuracy and completeness and finally transfer the data to the actual petition.

The cost of filing a bankruptcy petition for an individual or married couple is \$209 for a Chapter 7, \$194 for a Chapter 13. This may be paid in installments within 120 days of the filing date. If you have paid a fee to an attorney or a petition preparer, you are not eligible to pay the filing fee in installments. However, the discharge will not be granted until this fee is paid in full.

The original copy of the petition, along with three additional copies, must be filed with the bankruptcy court. A fourth copy should be retained by the petitioner for his or her records. The standard Blumberg forms provide enough copies for this. The petition can be typed or handwritten; however, all copies must be legible. The copies can be photocopied and filed as long as there is one signed original.

The following is a step-by-step approach to filling out the petition, beginning at the top.

The first page contains a caption which will identify the bankruptcy court where you are filing. In the New York City area, there are only two possibilities:

**United States Bankruptcy Court  
Southern District of New York**

The Southern District is comprised of the Bronx, Manhattan, Westchester, Rockland, Putnam, Dutchess, Orange and Sullivan counties. The courts in this District are located at:

- 1 Bowling Green, New York, N.Y. 10004  
Tel: 212-668-2870 (Manhattan and the Bronx)
- 300 Quarropas Street, White Plains, N.Y. 10601  
Tel: 914-390-4100, (Westchester and Rockland)
- 176 Church Street, Poughkeepsie, N.Y. 12601  
Tel: 914-452-4200 (Putnam, Dutchess, Orange and Sullivan)

Anyone living in this district may file at any location, but the case will be assigned to the court having responsibility for the county in which the debtor's residence is located.

There is a court services coordinator available at the Southern District of New York to assist you in obtaining court forms and answering procedural questions. Court employees, however, are prohibited by law from giving legal advice.

**United States Bankruptcy Court  
Eastern District of New York**

The Eastern District is comprised of Brooklyn, Queens, Staten Island, Nassau and Suffolk counties. The courts in this District are located at:

- 75 Clinton Street, Brooklyn, N.Y. 11201  
Tel: 718-330-2188 (Brooklyn, Queens and Staten Island)
- 290 Federal Plaza, Central Islip, N.Y. 11722  
Tel: 631-712-6200 (Nassau, Suffolk)

The debtor must file the bankruptcy petition in the proper court for the district in which the debtor lives. If the debtor has moved, the filing should be done in the district where the debtor has resided for more than half of the last six months.

Below the name of the court, write your name and the last four digits of your social security number. If you are filing a joint bankruptcy with your spouse, both of your names and social security numbers (last four digits) must be included. If you or your spouse has ever obtained credit or incurred a debt using another name, it is important that it be listed so that all creditors may be properly notified. Your names must be properly listed in the caption at the top of each page of the form.

Your current residence address must be listed so that the court can determine if you are filing in the correct district and send you notices of court hearings as well as your discharge, and your creditors can properly identify you. You can request that the court use a different mailing address for you (such as a post office box).

The debtor must disclose any prior bankruptcy he or she filed within the last six years and any ongoing bankruptcy of a business partner or spouse.

The beginning of the petition contains certain declarations that the information is correct. These must be signed by you, but they do not need to be under oath or notarized. The consequences of listing incorrect or false information are serious and can result in your discharge being denied, fines being levied or, in extremely flagrant cases, imprisonment being imposed. Do not sign these declarations until the entire petition has been completed.

The next series of schedules require detailed information regarding your debts, property, income and expenses.

## **Your Debts**

It is extremely important to list all of your debts. If you fail to list a debt on your bankruptcy petition, it might not be discharged and you may be obligated to pay it unless the creditor actually knew there was a bankruptcy proceeding in time to file a claim. Even if you question the validity or amount of a particular debt, it is wise to list it since it will probably be discharged. You may indicate on the bankruptcy petition that the claim is disputed, or if the dollar amount of the debt is uncertain or contingent.

The schedules list three types of debts : priority, secured and unsecured.

### **Priority Debts:**

Priority debts are generally those debts which are paid first if any of the debtor's funds can be distributed to creditors.

Administrative claims are claims having first priority. These include any expenses incurred by the trustee in the locating, recovery and sale of assets and the commission paid to the trustee. These claims are paid first out of non-exempt assets and assets not encumbered by liens (which are essentially holds that the law allows to be placed on a debtor's property by a creditor).

Wage claims also get priority status. If you owe wages to an employee for work performed within 90 days prior to the filing of the bankruptcy, claims of up to \$4,925 per employee will receive priority status.

If you collected a deposit of up to \$2225 in a consumer transaction, that creditor is entitled to priority status to that extent.

Alimony, maintenance or support for a former spouse or child is considered a priority debt if it is provided for in a court order, property settlement or separation agreement.

For individuals, the most common type of priority debt owed is federal or state income tax. Income taxes which are due for fewer than three years (measured from April 15 of the year following the tax year involved) are priority debts which are not dischargeable and must be paid. In addition, if the IRS or a state tax bureau has made a new assessment within 240 days of the bankruptcy filing, the tax debt must be listed as a priority debt and will have to be paid in full despite filing for bankruptcy.

### **Secured Debts:**

Secured debts are obligations associated with specific items of property. For example, most home buyers obtain mortgages. If the mortgage is not paid, the lender can foreclose on the house that secures the debt and get the house. This is the nature of a secured debt. Other assets that are typically encumbered by such debts are cars, furs, appliances, jewelry, cooperative apartments, condominiums and others. Generally, even though a bankruptcy has been filed, a secured debt must be paid in full if you wish to keep the secured asset. A bankruptcy discharges debts but it generally has no affect on liens which creditors can still enforce against secured property.

### Unsecured Debts:

The vast majority of debts listed on bankruptcy petitions are unsecured debts. These include:

- Credit card debts
- Rent
- Utility bills
- Hospital and doctor bills
- Taxes (other than those entitled to priority)
- Student loans
- Personal injury actions against the debtor
- Parking tickets and moving violations
- Personal loans
- Auto loans
- Loans from relatives and friends
- Debts as a co-signer
- Restitution debts
- Debts arising from driving under the influence of alcohol or drugs

All debts must be listed even though ***some of them might not be discharged*** (see page 11 for a list of non-dischargeable debts). It is crucial that a creditor receive notice that you have filed for bankruptcy; therefore, each creditor's address must be accurately listed on the petition. In addition, account numbers for each of your debts must be included.

### Your Assets

You must list all of your assets. Every item of property that you own or have an interest in as of the date you file your bankruptcy petition must be fully disclosed and listed. Items of property include:

- Real estate, including homes, houses, cooperative apartments, condominiums, time-shares, cemetery plots and investment property.
- Cash at home, in banks, savings accounts, checking accounts, credit unions and safe deposit boxes.
- Household goods and furnishings, including appliances, television sets, radios, stereo systems and components, computers, VCRs and furniture.
- Books, art objects and collectibles.
- Apparel, jewelry, sports equipment and other personal possessions.
- Motor vehicles, including cars, trucks, mobile homes, motorcycles and snowmobiles.
- Boats and equipment.
- Business assets, such as office equipment, inventories, receivables, farm animals and equipment, patents and copyrights.
- Investments in stocks and bonds, including government obligations (savings bonds and Treasury bills, notes and bonds).
- Any interest in insurance policies. If you are the beneficiary of a life insurance policy and the insured dies within six months after you file for bankruptcy, the proceeds will be included as your asset.

- ▣ Pensions, profit sharing plans, annuities, IRAs, Keogh and other types of retirement plans.
- ▣ Personal injury or other legal actions you may have against others.
- ▣ Any interest as a beneficiary of the will or estate of another person who has died or as the beneficiary of a trust. If someone dies within six months after you file for bankruptcy, your inheritance will be included as your asset.
- ▣ Tax refunds.
- ▣ Security deposits.
- ▣ All other property.

## Exemptions

The law allows every debtor to protect certain property from your creditors, even if the value of your assets is greater than your debts.

Federal bankruptcy law specifies that various items of personal and real property belonging to a debtor cannot be taken by creditors in order to satisfy their claims. Such items are "exempt" property. Each state may specify what type of property its citizens may claim as exempt. New York State has done this and the following exemptions apply to New York State residents only:

- ▣ Real property owned and used as a primary residence, including a house, land, a condominium, cooperative apartment or motor home, up to \$10,000 of equity. (Equity is the current value less the monies owed on all mortgages and judgment liens.)
- ▣ A cemetery plot.
- ▣ Cash, totaling up to \$2500, unless an exemption for real property is claimed. This includes U.S. currency, savings accounts, checking accounts, credit union shares, U.S. savings bonds and the right to receive a federal or state income tax refund.
- ▣ Clothing and household goods, such as household furniture, a stove, refrigerator, radio, television, cookware, tableware, sewing machine, books, pets worth up to \$450, a family bible, pictures and schoolbooks, other books up to \$50, a wedding ring, a watch up to \$35 and work tools up to \$600.
- ▣ Security deposits for rent and utilities.
- ▣ A motor vehicle, up to \$2400 over any secured amount owed for the vehicle.
- ▣ Proceeds of a life insurance policy, but only if someone else is the beneficiary.
- ▣ The right to receive certain awards and benefits: social security, unemployment compensation, public assistance, veteran's benefits, disability benefits, crime victim's awards and personal injury awards (up to \$7500 not including pain and suffering and actual monetary loss).
- ▣ Property needed for future support, such as alimony and support and wrongful death awards to dependents.
- ▣ 90% of wages earned within 60 days of the filing of a petition.
- ▣ Pensions, Keogh and 401(k) retirement plans, IRAs and most annuities.

- **There is a \$5000 limit on the exemptions which may be claimed for the total of cash, household goods, clothing and certain annuities.**

If you are filing a joint petition with your spouse, each of you can claim these exemptions.

It is extremely important to review your assets and debts before filing for bankruptcy. If you have property which will not be protected by an exemption, it may be sold and the proceeds may be used to pay your creditors. An attempt to switch a non-exempt to an exempt asset may be scrutinized by the bankruptcy judge. Any attempt to transfer your assets before you file the petition for less than their value or to your relatives could result in a discharge being denied. In addition, you must claim any exemption to which you feel you may be entitled. If you do not claim the exemption, you may lose the property.

## **Your Budget**

Your bankruptcy petition must include a detailed list of your current sources of income and regular expenses as they will be after you have filed your petition. This is very important. If the judge assigned to your case decides that your budget reflects that you can repay your creditors without difficulty, the judge may dismiss your case. In a Chapter 13 bankruptcy, the amount that you will have to pay your creditors monthly is based upon the budget you supply to the court. Regular monthly income from all sources must be disclosed in your budget, including salary, commissions, business income, investment income, tax refunds, rent, public benefits, unemployment compensation and the like. Any change in your income or expenses during the bankruptcy proceeding should be disclosed to the court.

## **Statement of Affairs**

An important part of the bankruptcy petition is the Statement of Affairs. The purpose of this schedule is to disclose various elements of your financial affairs which might not be apparent in the other schedules. The kinds of information which must be provided are:

- Where you currently work, your occupation and your income for the last two years.
- Any partnerships or businesses you have engaged in within the prior six years.
- Payments to creditors within the prior ninety days.
- Repossessions, foreclosures or transfers of property within one year before the petition is filed.
- Closed accounts in your name within the last year, such as accounts at banks, credit unions, brokerages and pension funds.
- Whether you have maintained books and records of your financial affairs and their location.
- Property you are holding for someone else or property someone else is holding for you.
- Transfers of property or gifts to relatives within the last year.
- Casualty losses or gambling losses within the last year.
- Payments to or payment agreements with attorneys or with any budget or credit counseling service.
- Safe deposit boxes.
- Any prior addresses within the last two years.

## Other Schedules

In addition to the above forms, you must provide to the court a statement as to what you intend to do with assets which secure any debts, such as your home (if securing a mortgage) or car. This is called a Statement of Intention. You must disclose whether you intend to surrender the asset or keep it. Generally, if you wish to keep such an asset, you must continue to pay for it. You may choose to "redeem" the property, which means that you can arrange to pay the creditor the full current value of the property in one lump sum, even if the debt is considerably higher. You may "reaffirm" the debt, which means you agree to continue to make payments until the debt has been paid in full. Either option must be in writing and be approved by the bankruptcy judge. If you reaffirm a debt, you may rescind (back out of) your agreement within 60 days of the discharge or the date you sign the reaffirmation, whichever occurs later.

Executory contracts are agreements which have not been fully completed. Examples of executory contracts are unexpired leases for residences, cars, equipment, commercial property, employment agreements, home improvement contracts and contracts for delivery of goods or services in the future. In a Chapter 13, you may choose to terminate or assume (renew) any executory contract any time before the judge confirms your plan. In a Chapter 7, the trustee has 60 days to assume or reject a lease for your residence or lease of personal property. If a trustee assumes the debtor's unexpired lease, he or she may use the benefits of that lease for your creditors. You must also disclose what you intend to do regarding executory contracts in the bankruptcy petition.

If another individual is a co-debtor on any of the debts, that person's name and address must be provided. You should, but you are not required to, notify any co-debtors that you are filing for bankruptcy since the creditor may now try to pursue its claim against them.

You must provide a separate list of all creditors and their representatives with their full addresses. This is called a matrix, and it enables the court to mail notices to all your creditors.

In the Southern District of New York, the creditor matrix must be provided on a computer diskette if there are more than ten (10) creditors. Specifications for the diskette are available at the office of the Clerk. If the debtor does not have the ability to provide such a diskette, the petition must be accompanied by a statement, available from the Clerk, stating that fact.

You must also complete and file a Statement of Social Security Number (Official Form 21). This is the form by which you report your Social Security Number to the court (remember you entered only the last four digits of your Social Security Number on your petition). The court maintains this form privately; it does not become part of the public record.

## What Happens After the Petition Is Filed?

The moment the Clerk of the Bankruptcy Court accepts your bankruptcy petition, you are granted certain protections which are very significant. You are immediately entitled to the benefits of the "automatic stay." This means that none of your creditors may take any further action to collect what you owed them. For example,

- If there was a garnishment against your salary for a debt, that garnishment must stop.
- If a foreclosure or even a foreclosure sale is pending against your home, it must stop.
- If your landlord is trying to evict you, such action must stop until the court orders otherwise.
- If your car or other property is about to be repossessed for missed payments, the automatic stay prevents the repossession.



■ If there are any lawsuits that were brought or could have been brought against you prior to your filing for bankruptcy based upon your failure to pay money, those lawsuits are automatically stayed.

However, the automatic stay will not stop a criminal action, nor does it prevent the debtor's spouse or former spouse from collecting alimony, maintenance or support from property that is not exempt.

It is important to notify your creditors immediately when you have filed, so that you can take advantage of the automatic stay. The court itself will do so, but it may take several days before its notice is prepared and sent to you and the creditors.

You cannot be discriminated against simply because you have filed for bankruptcy. You cannot lose your job, be demoted or be denied a job or a promotion because of your filing. In addition, no government agency may refuse, revoke or suspend a license, permit or other public benefit, including student loans, solely because you have filed for bankruptcy. A utility cannot terminate service even if you are listing it as a creditor, but the utility can insist upon a new, reasonable deposit for future services.

The court will appoint a trustee to administer your case. The trustee may contact you to provide her/him with additional information, such as copies of tax returns, appraisals of property, pension statements, pay stubs, insurance policies, bank statements, car title and registration, and deeds. You must provide the data requested.

The notice the Bankruptcy Court mails to you is extremely important because it gives you a great deal of information regarding your case, including:

- Your case number.
- The date your petition was filed.
- The name of the judge and trustee assigned to your case.
- The dates, times and places of your court appearances.
- A statement regarding the automatic stay.
- When and how creditors must file claims.
- When objections to your discharge must be filed.
- If you are filing a Chapter 13 petition, the details of the plan to repay your creditors.

On the date scheduled for the "first meeting of creditors," you (and your spouse if you are filing jointly) must appear at the place designated by the trustee. At the meeting the trustee will review your petition and may ask questions regarding your assets and debts, income and expenses, employment and family obligations. You will be expected to answer the questions under oath. It is the trustee's job to ask these questions so that the court can determine if the information contained in your petition is correct and if the trustee will be able to locate any assets which might be available for creditors. You must answer these questions fully and completely.

Any of your creditors may appear at the first meeting of creditors and ask any questions regarding your debts, assets and budget, but this rarely happens. Your creditors may elect a trustee to act on their behalf, but the trustee assigned by the court usually retains that position.

After the trustee completes the questioning, the first meeting will be "closed" or adjourned to another date to permit you time to provide her or him with further items or information. When the first meeting is

closed, this generally means that the trustee is satisfied with the information provided and no further court appearance is necessary. If you have filed a Chapter 13 petition, a "confirmation" hearing will be scheduled approximately two to four months after the first meeting, although you must start paying the trustee within 30 days of the filing of the plan. At the confirmation hearing, the judge may approve your plan to repay your creditors based upon your record of payments since the date the petition was filed and the recommendation of the trustee.

A creditor wishing to challenge your discharge or the discharge of a specific debt must start an adversary proceeding within the bankruptcy case and you must receive certain papers to notify you. This proceeding must be started within 60 days after the date set for your first meeting of creditors and you must respond if you wish to oppose the creditor bringing the action. Creditors challenging a discharge may claim that you committed a theft, a fraud in your dealings with them or otherwise acted wrongfully.

For certain debts such as taxes and student loans, you will have to start an adversary proceeding of your own against the student loan or taxing agency or such debts will not be discharged.

Creditors must file claims with the court if they wish to have their debts paid. They will be paid only out of funds that the trustee can obtain from your non-exempt assets. Most people who file Chapter 7 cases have no assets with which to pay creditors since the available exemptions are usually greater than assets and therefore the creditors receive nothing. In Chapter 13 cases, priority and secured creditors who file claims must be paid in full and unsecured creditors who file claims will receive a percentage of their claims since the debtor must pay the trustee what the budget shows the debtor can afford over a period of 36 to 60 months. A creditor who does not file a claim or for whom a claim is not filed will not be paid.

Generally the bankruptcy judges in New York do not hold discharge hearings. If the judge orders a discharge hearing in a Chapter 7 case, it is usually held three to four months after the first meeting. In a Chapter 13 case, the discharge hearing is not held until after all payments are made under the plan of repayment.

The court clerk will mail the discharge to you and all of the creditors listed in your petition. This is a very important document. You should make copies of the discharge and keep them with other important papers. If any creditors listed in the bankruptcy petition try to seek payment of the debt from you in any way, you should show them the discharge documents. If any creditors sue you for payment of the discharged debt you should show the discharge document and a copy of your petition to their attorney listed on the summons.

## **The Discharge**

The object of filing a bankruptcy petition is to obtain a discharge in bankruptcy. The discharge means that no creditor with a dischargeable debt may, in the future, make any effort to collect that debt. If creditors try to sue you after you have filed for bankruptcy, and after the creditor has been notified, the creditor may be held in contempt of court if you can show that the debt was discharged. Even if a creditor obtained a judgment against you prior to the filing of your petition you still will not have to pay that debt.

The issuance of the discharge is usually automatic but in extreme cases the court may deny it for a number of reasons. The discharge may be denied if:

- The filing fee has not paid in full.
- You failed to comply with directives of the trustee or orders of the bankruptcy judge.
- You received another bankruptcy discharge within the last six years.
- You concealed, destroyed or transferred your property with the intent to hinder, delay or defraud

within one year before the bankruptcy petition was filed or after filing.

- You intentionally concealed or destroyed records of your financial dealings unless you can show a good reason for doing so.
- You lied under oath at the first meeting or any other court hearing.
- You failed to adequately explain the loss of assets.

The discharge is yours alone and it does not affect anyone else's obligations. If someone co-signed for one of your debts, your discharge will not eliminate the co-signer's liability. Unless you have agreed to pay the debt in full, the creditor may pursue the co-signer.

If one spouse files for bankruptcy and the other does not, the spouse who did not file will still be liable for any joint debts.

## **Non-Dischargeable Debts**

Certain debts will not be discharged even though they may be listed on your bankruptcy petition. This means that they will have to be paid despite the fact that you have filed for bankruptcy:

- Taxes and tax penalties for each of the last three years, measured from April 15 of the following year. For example, income taxes for the year 1988 are considered due April 15, 1989, so they are dischargeable after April 15, 1992. However, if a tax return was not filed or filed fraudulently, the tax debt will not be discharged. If the return was filed late, it will not be dischargeable within two years after the return was filed. If there is a new assessment of a tax, it will not be dischargeable if the petition is filed within 240 days of the assessment. For example, if the IRS learns that after you filed your return you did not report income properly, it may determine that you owe additional taxes. In addition, debts you incur to pay non-dischargeable Federal tax debts are non-dischargeable.
- A debt obtained by fraud, false pretenses, a false representation or a false written statement regarding the debtor's financial condition. For example, if on a loan application you intentionally failed to disclose that you had other debts and obtained credit on that misrepresentation, that debt may not be discharged.
- Debts for luxury purchases (over \$1075) within 60 days before the petition is filed or cash advances (more than \$1075) within 60 days before the petition is filed.
- A debt not listed in your petition, unless the creditor received actual notice of the fact that you filed for bankruptcy.
- Debts for embezzlement, larceny or fraud while acting in a position of trust.
- Alimony, separate maintenance and child support due to a child or former spouse of the debtor.
- Fines and penalties to a government agency. This includes parking tickets and moving violations.
- Student loans and grants made, guaranteed or insured by a government agency or a non-profit institution. This includes student loans from NYS Higher Education Services Corp., National Direct Student Loans (NDSL) or Guaranteed Student Loan (GSL) programs, loans made directly by government supported schools and loans made by private schools or banks which are federally or state guaranteed. A student loan may be dischargeable if you can show that it would impose a severe financial hardship for you to repay it, but you would have to show that it would be virtually impossible to arrange making small payments and that you had made a good faith effort to make payments in the past.

- A debt arising from the debtor's driving while under the influence of alcohol or drugs.
- A debt for restitution included in the debtor's conviction of a crime.

In Chapter 7, a creditor trying to deny the discharge of a debt based upon fraud, a false financial statement or written representation, luxury purchases, embezzlement or larceny must take action within 60 days of the meeting of creditors.

In Chapter 13 cases, only debts for alimony, support and separate maintenance, student loans, restitution or a criminal fine included in a sentence for the conviction of a crime, and debts arising from driving under the influence of alcohol or drugs, are non-dischargeable.

## **The Disadvantages of Bankruptcy**

The filing for bankruptcy is not without disadvantages. Most serious is the damage it does to your credit. The fact that you have filed for bankruptcy can remain on your credit report for ten years. This will usually mean that you may not be able to obtain credit for a substantial period of time. If you plan to purchase a car or a house in the future, it may be difficult or impossible to obtain financing. However, your debt situation may have already so damaged your credit that the filing of a bankruptcy may not have any greater effect.

When you receive a discharge you cannot obtain another discharge for six years. Any new debts incurred starting the day after you file for bankruptcy will have to be paid. If an emergency occurs, such as the loss of a job or a large medical expense, you will not be able to use bankruptcy as a safety net.

Any co-signers will continue to be liable even if you have filed for a Chapter 7 bankruptcy, unless they too file for similar protection. If you are filing a Chapter 13 petition and agree to pay in full a debt with a co-signer, the co-signer cannot be pursued for the debt as long as you remain in Chapter 13 and continue to make payments.

Before you file for bankruptcy, you must review your entire financial picture. Only then should you decide to pursue a bankruptcy as a last option. You should weigh the current advantages of filing for bankruptcy against the long term disadvantages. If possible, you should also discuss your situation with an attorney, even if you intend to file your bankruptcy yourself. You may wish to consult the legal referral service of your local bar association for general advice or more specific advice regarding your own financial situation.